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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street, NW
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

SEP 04 2003

FILE: LIN 02 041 59044 Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

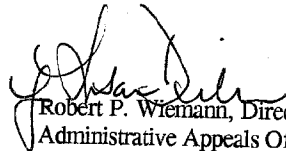
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a television sales and service company. It seeks classification of the beneficiary as a TV/VCR technician trainee. The director determined that the proposed training deals in generalities with no fixed schedule, objective or means of evaluation, which is prohibited by 8 C.F.R. § 214.2(h)(7)(iii)(A).

On appeal, the petitioner submits a statement. The petitioner states, in part, that there is a fixed schedule for the training, as well as training materials and means of evaluation.

Section 101(a)(15)(H)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part:

(ii) Evidence required for petition involving alien trainee--(A) Conditions. The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) Description of training program. Each petition for a trainee must include a statement which:

- (1) Describes the type of training and supervision to be given, and the structure of the training program;
 - (2) Sets forth the proportion of time that will be devoted to productive employment;
 - (3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;
 - (4) Describes the career abroad for which the training will prepare the alien;
 - (5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and
 - (6) Indicates the source of any remuneration received by the trainee and any benefit, which will accrue to the petitioner for providing the training.
- (iii) Restrictions on training program for alien trainee. A training program may not be approved which:
- (A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;
 - (B) Is incompatible with the nature of the petitioner's business or enterprise;
 - (C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;
 - (D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;
 - (E) Will result in productive employment beyond that which is incidental and necessary to the training;
 - (F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The record, as it is presently constituted, contains a listing, provided on appeal, of the equipment that the beneficiary would study and the hours allotted for each type of equipment. In the initial petition, the petitioner provided a brief statement and a listing of the types of equipment that the beneficiary would study with no information as to the length of time required to train on each type of equipment.

The director requested additional evidence, specifically, in part, "The type of training and supervision to be given, and the structure of the training program. . . . The number of hours that will be spent, respectively, in classroom instruction and in on-the-job training."

The petitioner responded:

Theoretical (classroom) instructions will be limited to just 10% of training time. Most of training time 60-70% [sic] will be practical non-productive training when trainee will be in position to observe practical service and troubleshooting methods and techniques from his supervisor. Trainee will be slowly introduced to all circuits listed in detailed technical training program already provided. He will also be instructed with procedures in testing, adjusting and troubleshooting methods and techniques. Also there is necessary troubleshooting and service work required to provide the necessary on-the-job experience to the trainee. That part of practical work will take 20-30% of training time and that's the time trainee will be involved in productive employment because he will have to work on customer's units and perform all necessary troubleshooting, servicing and adjustment procedures. He will be supervised all the time while performing this part of the training.

The director did not find the petitioner's response adequate and he denied the petition because the training program "deals in generalities with no fixed schedule, objective, or means of

evaluations. The record contains no evidence if there is any articulable and sequential program of training supported by formal training materials, books, syllabi and measurement (testing) instruments." In the appeal, the petitioner provided the specific number of hours that would be spent on each area of subject matter during the training. He also supplied information about how the beneficiary would be evaluated.

At the end of every part of this training . . . trainee will be put in a situation to perform all necessary troubleshooting methods, determine cause of problem and perform all necessary actions to eliminate problem. If trainee is able to perform all necessary procedures on his own, and successfully eliminate problem that will clearly indicate that that part of the training has successfully ended.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the Administrative Appeals Office will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Beyond the decision of the director, the Bureau finds that the petition may not be approved pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(D). This regulation forbids approval of a training program which, "Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States." In the initial petition, the petitioner stated that the type of training proposed, "as well as this technology [HDTV] is not yet available in Yugoslavia. The training will help the trainee to become familiar with new technologies so that when HDTV becomes available in his home country, he will already possess practical knowledge of it." The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The petitioner stated that by the time the two-year training program was scheduled to be completed, HDTV would exist in Yugoslavia, thereby providing an opportunity for the beneficiary to utilize his knowledge. The petitioner, however, cannot know at what point the technology would come into existence in Yugoslavia, nor at what point it could support a business of

service and repair. As such, the petitioner is not able to show eligibility at *the time of filing*.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.